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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

EBET, INC.,)
) Case No. 2:23-cv-01830-GMN-DJA
Plaintiff,)
) Las Vegas, Nevada
vs.) February 27, 2024
) Courtroom 3A
ASPIRE GLOBAL INTERNATIONAL)
LIMITED; AG COMMUNICATIONS)
LIMITED; ASPIRE GLOBAL 7)
LIMITED; ASPIRE GLOBAL PLC,)
) Recording method:
Defendants.) Liberty/CRD
) 1:31 p.m. - 2:02 p.m.
) MOTIONS HEARING

CERTIFIED COPY

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DANIEL J. ALBREGTS
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: **JOHN D. TENNERT, ESQ.**
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(Appearances continued on page 2.)

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1 APPEARANCES CONTINUED:

2 For the Defendants:

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9 -AND-

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15 * * * * *

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1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 27, 2024; 1:31 P.M.

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3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** EBET, Inc. versus Aspire
5 Global International Limited, et al., 2:23-civil-1830-GMN-DJA.
6 This is before the Court on Motion Docket 33 and the
7 stipulated Discovery Plan and Scheduling Order,
8 Docket Number 40.

9 Counsel, please make your appearance for the record.

10 **MR. TENNERT:** Good afternoon, Your Honor. John
11 Tennert of Fennemore Craig on behalf of the plaintiff, EBET,
12 Inc.

13 **THE COURT:** Hi, Mr. Tennert. Good afternoon.

14 **MR. BICE:** Good afternoon, Your Honor. Todd Bice on
15 behalf of the defendants, and with me is Robert Loigman and
16 Caitlin Jokubaitis from Quinn Emanuel. They're both admitted
17 *pro hac vice*. Thank you.

18 **THE COURT:** All right. Good afternoon to all of you.

19 All right. We are here, as my courtroom deputy
20 indicates, on Number 33, which is defendant's motion to stay
21 discovery, and Number 40, which is a Discovery Plan and
22 Scheduling Order.

23 The parties may not be familiar with how I conduct
24 these hearings, but for your information I will be providing
25 some brief background for the purposes of determining this

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1 motion. And then I'll outline the parties' respective
2 positions, outline the legal standard the Court will consider,
3 and then I'll have some questions for the parties. And then I
4 will rule from the bench on these, and the transcript from
5 today's hearing will be the order disposing of these motions
6 so that any party that wants to appeal, the transcript will be
7 the order.

8 So, with that, the background of this case, again,
9 for the purposes of determining this motion -- it's not
10 intended to be a comprehensive background of the case. This
11 case arises out of Plaintiff EBET, Inc.'s purchase of certain
12 business-to-consumer assets from Defendant Aspire, a
13 Malta-based owner/operator of several iGaming platforms. The
14 purchase occurred in October of 2021 and was memorialized in a
15 Share Purchase Agreement, otherwise known as an SPA.

16 EBET claims that Aspire fraudulently induced it to
17 enter into the SPA, that Aspire breached the SPA and an
18 implied covenant and good faith and fair dealing clause
19 inherent in the SPA, and accordingly the entire transaction
20 should be rescinded.

21 Now, in their motion Defendant Aspire moves to stay
22 discovery pending resolution of its motion to dismiss and
23 compel arbitration. Aspire argues that its motion to dismiss
24 disposes of the entire action and does not require additional
25 discovery. Aspire argues that good cause exists to stay

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1 discovery because the motion raises preliminary issues of
2 arbitrability and jurisdiction and because the parties will
3 incur undue burden and expense absent a stay. And, finally,
4 because EBET will not be prejudiced by a stay of discovery.

5 EBET responds that Aspire cannot convince the Court
6 that it is unable to state a claim for relief, essentially
7 arguing Aspire will fail on its motion to dismiss. EBET
8 spends a majority of their response arguing why Nevada is an
9 appropriate venue forum for this dispute and that Aspire
10 ignores forum selection clauses in four agreements executed by
11 the parties subsequent to and in connection with the SPA.
12 EBET argues that these subsequent agreements supersede the SPA
13 and none call for arbitration. Finally, EBT -- EBET argues
14 there is no good cause to stay discovery because their claims
15 are not arbitrable, the dispute regarding jurisdiction does
16 not create good cause for a stay, and because denial will not
17 cause undue burden or expense. EBET concludes that it will
18 suffer prejudice if discovery is not stayed.

19 Aspire replies that EBET mistakes the standard for
20 granting a motion to stay, focusing primarily on the
21 "preliminary peek" test disfavored by this Court. Regardless,
22 Aspire argues a preliminary peek at their motion to dismiss
23 and to compel arbitration confirms its merits. Aspire adds
24 the other relevant factors unrelated to the merits support a
25 stay because proceeding with discovery will deprive Aspire of

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1 the bargained-for benefits of arbitration, discovery will
2 impose substantial burden on them, and because EBET will not
3 be harmed by a stay.

4 Now, the legal standard that the Court will apply as
5 it relates to motions to stay discovery -- as I spill my
6 too-full water all over me -- Federal Rule of Civil Procedure
7 does not provide for automatic, blanket stays of discovery
8 because a dispositive motion is pending. The Court may stay
9 discovery under Federal Rule of Civil Procedure 26(c), the
10 standard for which is good cause.

11 Now, the Ninth Circuit has not provided a test or
12 rule for good cause, but it has set parameters. A court --
13 for instance, a court may stay discovery when it is convinced
14 that the plaintiff will be unable to state a claim upon which
15 relief can be granted, and that's *Wood versus McEwen*, 644 F.2d
16 797, 801. It's a Ninth Circuit case from 1981.

17 On the other hand, the Court may not stay discovery
18 when discovery is needed to litigate the dispositive motion.
19 And that's *Alaska Cargo Transportation, Inc. versus Alaska*
20 *Railroad Corporation*, 5 F.3d 378 at 383, and that's a
21 Ninth Circuit case from 1993.

22 Now, based on this Ninth Circuit law, courts in the
23 district of Nevada have often applied what is called the
24 "preliminary peek" test, and that comes from *Kor Media Group,*
25 *LLC versus Green*, 294 F.R.D. 579, and that's a 2013 case from

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1 the district of Nevada. This test evaluates the propriety of
2 the stay in accomplishing the goals of Rule 1 of the Rules of
3 Civil Procedure; that is, a just, speedy, and inexpensive
4 determination of the action. That's *Tradebay -- Tradebay, LLC*
5 *versus eBay, Inc.*, 278 F.R.D. 597 at page 603. That's a
6 district of Nevada case from 2011.

7 Now, this Court has found that -- or at least another
8 court has found that the "preliminary peek" test can sometimes
9 be problematic as it can be inaccurate and inefficient, and I
10 refer the parties -- as you probably know -- the *Schrader*
11 *versus Wynn*, 2000 -- a 2021 Westlaw case at 4810324 from
12 October 14th, 2021. Now, the analysis in *Schrader*, I believe,
13 provides a better analytic framework that's more appropriate
14 and which I adopt in my decisions regarding staying discovery.
15 That test asks if, Number 1, the dispositive motion can be
16 decided without further discovery and, Number 2, if good cause
17 exists, to stay discovery.

18 Once again, the question of good cause, it may be
19 established using the "preliminary peek" test, but it also may
20 be established by other factors not related to the merits of
21 the dispositive motion. For example, in cases where a movant
22 seeks to stay discovery to prevent undue burden or -- or --
23 undue burden or expense, under Federal Rule of Civil Procedure
24 26(c)(1), in that instance the movant must establish what
25 undue burden or expense will result from discovery proceeding

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1 when a dispositive motion is pending. I think ultimately the
2 question, as guided by Rule 1 of the Federal Rules of Civil
3 Procedure, I'm trying to determine whether it is more just to
4 speed the parties along in discovery and other proceedings
5 while a dispositive motion is pending, or whether it is more
6 just to delay or limit discovery and other proceedings to
7 accomplish the inexpensive determination of the case. And
8 that's the *Tradebay* case.

9 Finally, it's the burden of the party seeking the
10 order to show good cause by demonstrating harm or prejudice
11 that will result from discovery. That's *Rivera versus Nibco,*
12 *Inc.*, 364 F.3rd 1057 at 1063, and that's a 2004 case from the
13 Ninth Circuit.

14 And so I would, with that, say -- Mr. Bice, I presume
15 you'll be arguing this primarily, or will somebody else?

16 **MR. BICE:** Mr. Loigman will, Your Honor.

17 **THE COURT:** All right. Then I'll ask you -- and is
18 it pronounced Loigman?

19 **MR. LOIGMAN:** Yes, Your Honor.

20 **THE COURT:** Mr. Loigman, so I know that you talk
21 about the benefit of your negotiated bargain in the PSA [sic],
22 and that's one of the pieces of prejudice that will inure
23 if -- if I don't grant this. What else -- what other
24 prejudices are there? I mean, tell me a little bit more,
25 flush out the discovery and the issues that might be a problem

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1 for you if I don't stay discovery.

2 **MR. LOIGMAN:** Sure, Your Honor.

3 First of all, with respect to the first point that
4 you mentioned, which is the prejudice because there is an
5 arbitration provision in the agreement, that's a very
6 significant prejudice and one that the U.S. Supreme Court has
7 repeatedly recognized is very substantial and one which the
8 Congress, of course, has incorporated into statutes as being a
9 particularly compelling federal purpose, particularly when
10 you're dealing with international commercial arbitration such
11 as you are here.

12 And, in fact -- one thing I should mention to
13 Your Honor is we sent over to plaintiff's counsel yesterday a
14 decision that came down on Friday, so we just found it, from
15 the district of Arizona issued by Judge Lanza which, with the
16 Court's permission, I'd like to reference to the Court. I'm
17 happy to hand up a copy if it's helpful. But the reason I --
18 I mention that, Your Honor, is because, as they pointed out in
19 that case, the Supreme Court in *Coinbase versus Bielski*, which
20 was just last year, explained that the benefits of arbitration
21 include efficiency, less expense, less intrusive discovery,
22 and the like. And, in fact, because of that, even if a court
23 denies a motion to compel arbitration, as soon as that denial
24 is appealed, the case is stayed entirely; discovery is stayed,
25 along with the rest of the case.

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1 And so one of the things that the Court pointed out
2 on Friday was, given that there would be a stay of the case if
3 it's appealed, even once there's a determination that --
4 against arbitration, a stay certainly makes sense before
5 there's a determination as to whether arbitration is
6 appropriate.

7 Now, with that said, the arbitration rules that would
8 apply here, which are the Maltese arbitration rules, they will
9 not -- surprisingly, much narrower than the broad federal
10 discovery rules, including discovery of third parties,
11 including depositions and the like. And one of the reasons
12 why that is particularly relevant here, Your Honor, is that
13 Your Honor may have seen that this past Friday the plaintiffs
14 filed a motion for leave to file an amended complaint. Now --

15 **THE COURT:** I saw that on the docket.

16 **MR. LOIGMAN:** In that motion for leave, they are
17 seeking to add new parties to this case, they are seeking to
18 broaden the case substantially. That -- that complaint is not
19 before the Court right now. It's not -- it's not the
20 [indiscernible] complaint.

21 But that said, this morning, just literally a few
22 hours before this hearing, the plaintiff served a third-party
23 subpoena on a company called Aristocrat. And -- and just to
24 explain to Your Honor what this is, is that the defendants in
25 this case, which are various Aspire entities, their ultimate

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1 parent is a company called NeoGames. NeoGames has entered
2 into a sale agreement, is being acquired this upcoming year,
3 by a company called Aristocrat. It's many times removed from
4 this case, but the plaintiffs have served a third-party
5 subpoena upon Aristocrat seeking a huge array of information.
6 I think there were 48 requests in that, first request being
7 the agreement for merger between Aristocrat and NeoGames,
8 neither of which are parties to this case.

9 That's the kind of -- first of all, the fact that it
10 was served just hours before the Court was going to consider
11 whether discovery should move forward at all seems to us to
12 be -- you know, obviously can't speak to their motives, but it
13 was a way to try to bring this case to Aristocrat's attention
14 before a discovery stay might come in place in order to
15 potentially interfere with the Aristocrat/NeoGames merger.

16 But that -- that type of discovery, very broad, very
17 intrusive, scorched-earth litigation is the kind of stuff that
18 we will be dealing with before there's even a determination as
19 to whether this case should go to arbitration.

20 **THE COURT:** So that's the sort of prejudice above and
21 beyond the failure to get the benefit of your bargain as it
22 relates to the arbitration. That, you say, is significant and
23 I shouldn't downplay that. But on top of that, there are
24 other -- that's just yet one example of what will be
25 forthcoming if discovery's not stayed and that will cause

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1 prejudice to -- to your client?

2 **MR. LOIGMAN:** Right. And to add to that, Your Honor,
3 as -- as cases I've noted, if a discovery stay is denied when
4 there's a motion for arbitration, in some respects that's like
5 denying the motion for arbitration itself. Because limited
6 discovery is such a part and parcel of -- of -- of the
7 arbitration process.

8 **THE COURT:** Well, that's what I -- and that was
9 the -- something else I wanted to ask you, and I looked at my
10 notes. You know, the difference between the arbitration
11 discovery and what discovery would occur if I don't stay it,
12 and what I hear you say -- or what I hear you saying is that
13 the discovery -- if the arbitration provision is upheld and
14 your motion is granted, that discovery will be a lot narrower
15 in focus than what would be in a federal case?

16 **MR. LOIGMAN:** So -- so two points to make on that.
17 One, it would certainly be a lot narrower as is typical in
18 arbitration --

19 **THE COURT:** Right.

20 **MR. LOIGMAN:** -- than it would be in a federal case.
21 Secondly, the discovery here is largely going to take place in
22 Europe. That's where all of the Aspire entities are based.
23 That's where the services at issue take place. They're not
24 here in Nevada. They're in Europe, which means they're all
25 going to -- all the discovery's going to be subject to a layer

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1 of European privacy protection laws; the GDPR, for example.

2 Now, I'm not saying that makes litigation in the
3 United States impossible. There are times when you balance
4 those and discovery to be required. But -- but what that does
5 is make discovery even more burdensome. Because, first of
6 all, the Aspire entities will have to have counsel in Europe
7 in order to review the documents, to gather them because that
8 has to be done in Europe before the documents can even be
9 transmitted to the United States. And in doing that they will
10 then need to redact all private information that's not
11 relevant to the case.

12 And in this case, for example, where they're seeking
13 records about the number of registered players, you know,
14 over, you know, somewhere -- I don't know the exact number but
15 hundreds of thousands, if not more, of registered players,
16 that -- the number may be relevant, but certainly the identity
17 of each player might not be relevant, their name or -- and so
18 that's all going to need to be redacted before it can be sent
19 to the United States. It's a massive undertaking, and in this
20 particular case, because it's an international undertaking
21 with this overlayer of all these international statutes that
22 will have to be dealt with, it makes it even more complicated
23 than it would be in an ordinary case.

24 **THE COURT:** All right. All right. Anything else? I
25 don't have any other questions.

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1 **MR. LOIGMAN:** I do want to mention to Your Honor one
2 other question because I think -- one other point because I
3 think it's notable, which is that we asked to stay discovery
4 pending a decision by the District Court on the motion for --
5 for arbitration. They -- one of the things that we raised in
6 that motion was that this might not even be an issue for the
7 District Court to decide. This might be an issue for the
8 arbitrators to decide, whether it should go to arbitration or
9 go to -- go to court. And the case that they cite -- that the
10 plaintiffs cite is a case called *Coinbase versus* -- actually,
11 *Suski versus Coinbase*. The *Suski versus Coinbase* case is a
12 Ninth Circuit case where they talked about there was one
13 agreement and then there was a later agreement and which
14 agreement should govern as to the dispute. The dispute
15 actually focused solely on the second agreement. But the
16 Court decided in that instance it could decide whether the
17 arbitration provision applied.

18 But, in fact, the Supreme Court has granted
19 certiorari on this specific issue in that case of who should
20 have the right to review in the first instance, and it is
21 hearing argument coincidentally on that tomorrow morning at
22 10:00 a.m.

23 **THE COURT:** I can tell you which way my colleagues
24 and I are probably hoping that goes.

25 **MR. LOIGMAN:** Well, it could well go the same way as

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1 the last *Coinbase* case in the prior --

2 **THE COURT:** And I say that, for the record, just
3 simply out of our selfish -- you know, if somebody else wants
4 to decide that, that's one less thing we have to decide. If
5 that's the law, we'll be happy to follow it.

6 **MR. LOIGMAN:** Right. And obviously that is certainly
7 an outcome of the -- of the argument.

8 **THE COURT:** Right. All right.

9 **MR. LOIGMAN:** A possible outcome.

10 **THE COURT:** All right.

11 **MR. LOIGMAN:** Thank you, Your Honor.

12 **THE COURT:** So, Mr. Tennert, one of the issues I have
13 when I looked at this was, if I'm reading this right, all I'm
14 seeing in terms of the prejudice that you're claiming is the
15 fact that you're not going to have a -- a -- a quick -- you
16 know, under -- under Rule 1, a -- a speedy resolution of this
17 matter.

18 What -- what sort of prejudice would EBET incur if --
19 if I were to stay discovery while this issue is being decided?

20 **MR. TENNERT:** Yes. Well, thank you, Your Honor.

21 And -- and we recognize your -- your concern there.

22 Your Honor, as you may know from the -- the complaint
23 that has been filed -- and we have filed an amended complaint,
24 that's correct, and I know that is certainly not before the
25 Court today. But I -- just for the -- for the Court, the

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1 amended complaint includes substantially more allegations that
2 relate to the alleged fraud, misrepresentations. It does add
3 additional parties located in Nevada with business in Nevada
4 as well.

5 But getting back to the -- the prejudice that we
6 would face if we're not able to proceed with discovery, as
7 Your Honor knows from your review of our complaint and the
8 briefs here, this -- this dispute involves a transaction that
9 happened over two years ago and information that would predate
10 that, including information, you know, that's ongoing today.

11 Now, to kind of touch on the -- the expense part of
12 that, most, if not all, of the information in this case will
13 be electronic. And whether stored in Nevada or outside of
14 Nevada, the expense and burden of discovery is the same,
15 Your Honor.

16 We have -- we have pursued discovery since this case
17 has started. We participated in a 26(f) conference. We have
18 made initial disclosures. We have served written discovery,
19 and we've started to serve third-party discovery. And that,
20 Your Honor, is in -- in compliance with our obligations of --
21 by this Court to move discovery forward in an expeditious
22 manner. And we're doing that, Your Honor, because, you know,
23 documents are lost, witness memories fade, and we're seeking
24 to pursue this discovery, you know, as -- as expeditiously as
25 possible in compliance with Rule 1.

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1 **THE COURT:** If everything's stored electronically,
2 how are things going to get lost?

3 **MR. TENNERT:** Well, Your Honor, not -- not only the
4 electronic documents -- or electronic information is what
5 we're seeking but also witnesses. This case may involve
6 numerous witnesses, both, you know, in the United States and
7 outside of the United States who may have information.
8 Also --

9 **THE COURT:** What -- what sort of -- give me an idea
10 because, you know, that is -- that could be an issue. You
11 know, memories fade, time goes by. But -- so what would they
12 be testifying to? What sort of information might they --
13 might fade away or they might forget if -- if time lapses
14 and -- and I stay discovery?

15 **MR. TENNERT:** Yeah. And, Your Honor, I'll give you a
16 few examples. So one example in one of the allegations of
17 misrepresentation and fraud both prior to the transaction and
18 after would be the representations concerning affiliate
19 accounts and marketing expenses and operating expenses.

20 Now, after the transaction had closed, it took some
21 time for EBET to discover this what we'll call affiliate
22 misrepresentations. And what -- what that is, is the
23 affiliates are entities that provide marketing services for
24 the online gaming applications, and then they're paid a
25 certain amount based on number of players who register and

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1 deposit a certain amount of money.

2 Now, it wasn't until after the deal had closed that
3 EBET had discovered that, prior to the -- the deal closing,
4 Aspire, and through its agents, had been manipulating that
5 data and underpaying affiliates fraud -- in a fraudulent way
6 such that the operating expenses were substantially lower by
7 hundreds of thousands per month potentially based on some of
8 the information that we have. And that really came to light
9 following, you know, EBET actually getting that information
10 and getting into a affiliate database that was able to, you
11 know, identify some of these issues. But not only that, also
12 from former employees of Aspire who had confirmed the -- the
13 misrepresentations and the fraudulent conduct of Aspire.

14 So, you know, with --

15 **THE COURT:** So how did they confirm it? What do you
16 have that -- that is confirming? Do you -- did they have
17 writings? Do they have documents? Do they have e-mails?

18 **MR. TENNERT:** Yeah, both -- both through e-mails and
19 documents and testimony -- and potential testimony of
20 witnesses, of -- of former Aspire employees.

21 **THE COURT:** It sounds, to me, to the extent you might
22 have an issue with recollections fading, that you have the
23 sort of things that the rules are designed to refresh
24 recollections with.

25 **MR. TENNERT:** Well, yeah, you're correct, Your Honor.

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1 But it's an issue of locating these witnesses and also
2 developing that factual record, too. So we're seeking to --
3 you know, we -- we have -- we've made allegations that relate
4 to fraudulent conduct, but, you know, a vast majority of
5 these -- these documents that may exist out there we just
6 don't know. You know, we would -- we would -- you know, I
7 don't believe this to be true and it may be true, but, you
8 know, whether or not there are actual documents that confirm
9 this fraud, we may need to speak to all the former employees
10 and witnesses of -- of Aspire who can testify to these issues.

11 **THE COURT:** So let me ask you this. If -- if I stay
12 discovery, my impression of that would be that you can't
13 propound discovery on -- on the defense; no interrogatories,
14 no requests for production of documents, no setting the
15 depositions. But that doesn't stop you or your clients from
16 contacting these people and reaching out and getting
17 statements from them, does it? I mean, I -- you still can
18 investigate your case and do things that you can do. You just
19 can't force the other side to participate in the discovery
20 process. Am I wrong there?

21 **MR. TENNERT:** Well, you're not incorrect, Your Honor,
22 [indiscernible] respect that the parties can certainly take
23 informal discovery and seek to interview witnesses. But in --
24 in situations such as this where we are pursuing serious
25 allegations of fraud, you know, as it relates to a highly

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1 regulated industry, both, you know, as we know in Nevada and
2 worldwide. And so, you know, having the ability to, you know,
3 use process and use formal process to compel not only
4 discovery from our -- our opponent who, you know, again, we've
5 alleged serious allegations to uncover this fraudulent --
6 further fraudulent -- evidence of fraudulent conduct, but also
7 as to third parties, which may include, you know, current or
8 former employees or agents of Aspire. In the amended
9 complaint that we've alleged claims against Aspire's parent
10 company, NeoGames. We've also alleged allegations of
11 conspiracy as it relates to this deal and the fraudulent
12 conduct that has occurred and alleged in our complaint.

13 **THE COURT:** All right. All right. Anything else,
14 Mr. Tennert? I don't have any other questions.

15 **MR. TENNERT:** No, Your Honor. I just wanted to go
16 back. And we do recognize and respect that this Court has
17 adopted the good-cause standard that looks at not only, you
18 know, whether the -- you know, a dispositive motion requires
19 additional discovery and then also whether good cause exists.
20 And as you've mentioned before that, you know, the preliminary
21 peek can be part of that good-cause analysis.

22 And so for Your Honor's -- you know, for -- for your
23 sake, in our opposition we did argue the "preliminary peek"
24 standard based on that, and in large part that Aspire's motion
25 really does focus in on the merits of the -- the argument,

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1 which is the arbitration provision in the Share Purchase
2 Agreement.

3 We are contesting the validity of an agreement to
4 arbitrate and so we're not arguing the scope of a arbitration
5 agreement, but we are putting forth a promissory note that
6 is -- was signed by Aspire that does place jurisdiction
7 squarely in Nevada. And, you know, to the extent it goes to
8 the merits as part of that good-cause argument, we submit
9 that, you know, good cause exists to -- good cause does not
10 exist to stay discovery.

11 **THE COURT:** All right. Okay. And I appreciate that,
12 and I -- you know, it's not like I've -- and I don't know what
13 Judge Weksler's done, but it's not like this Court has
14 completely abandoned the preliminary peek in terms of looking
15 at it. I just found it onerous and unwieldy that -- to do my
16 own analysis, so to speak, of -- of the underlying motion and
17 make that the central focus of the determination. And so it's
18 not that I don't look at it or consider it. Because in this
19 case I think it's -- it's an important issue because it -- it
20 is a jurisdictional issue. And that's different than
21 something along the lines of, well, they can't state a claim
22 or they're not going to be able to prove this so throw it out
23 now.

24 And so it's not like I completely ignore the
25 underlying dispositive motion because I think that is just

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1 part and parcel of -- of good cause. And so to the extent
2 that may help the parties in the future know what the Court is
3 thinking when I -- when I look at this issue and analyze it,
4 that -- that is part of what I'm thinking.

5 But I appreciate that, Mr. Tennert. And, again, I
6 don't mean to insinuate that you shouldn't have spent any time
7 talking about that. I think it was important. I -- I just
8 think, you know, again, in this case there was some other
9 considerations.

10 And I think, again, at the end of the day then -- and
11 you can go ahead and be seated, Mr. Tennert. I -- it's -- you
12 know, I've got to balance, you know, the right of the
13 plaintiff to -- to move the case along, to pursue their case,
14 to -- to pursue discovery as is their right in these cases,
15 and then I have to balance it in a case like this whereas the
16 defense points out this, you know, is a jurisdictional issue
17 that can be decided without any discovery. And I don't think
18 anybody's contesting that. And so I -- I think in large part
19 some of this balances the prejudice to the various parties,
20 you know, taking into consideration Rule 1, and a lot of it is
21 the just, inexpensive determination of a case.

22 And I think Mr. Loigman's arguments about some of the
23 nuances and complexities of this specific case ring true to
24 the Court in terms of -- or resonate with the Court in terms
25 of the prejudice that -- that they would incur if discovery

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1 continues. Just the amount of information, the complexity
2 with discovery being in Europe and here, an example already
3 of -- of subpoenas going out that are going to clearly -- at
4 least in my estimation -- result in more discovery litigation
5 down the line, which isn't going to be inexpensive. And so I
6 balance that with what I'm hearing from EBET, Inc., which is
7 the time and the witnesses' memories fade and, you know, the
8 potential of lost documents, but I think in this day and age
9 that's less and less likely with everything being stored
10 electronically, especially with parties to the case like this
11 that are used to doing that, that are basically online,
12 electronic-type companies that would be, I think, completely
13 in their normal practice to -- to store information
14 electronically, which decreases, at least in my estimation,
15 the chance that things will be lost or destroyed or otherwise
16 create prejudice for EBET because of a delay in the discovery.

17 In terms of, again, the witnesses' memories fading,
18 I -- I understand that as well. I spent a career before I was
19 appointed to the bench trying to delay cases for that very
20 hope and not with very much success. So I understand they
21 fade. But I think in this case, again, you've got e-mails and
22 it's -- it's a different sort of situation where, to the
23 extent they may fade about some things that happened a year or
24 two ago, it's very likely that there's going to be e-mails and
25 other information that will be able to jog memories and -- and

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1 help them testify. And so I -- I think the prejudice as it
2 relates to those issues is minimal, at least when compared to
3 the prejudice Aspire and the defendants would incur if I were
4 to deny their motion.

5 And so I think, on balance, I'm going -- I think
6 facts require me to grant their motion to stay the discovery
7 pending the disposition of their motion to dismiss and compel
8 arbitration.

9 And so I will grant Number 33, the defendant's motion
10 to stay. Because I'm granting that, I will deny the Discovery
11 Plan and Scheduling Order that was proposed at Number 40.

12 I'll note that that outlined the parties' position, including
13 incorporating a motion to stay discovery because, of course,
14 Aspire didn't want a Discovery Plan and Scheduling Order; they
15 wanted a stay. I will deny that without prejudice, and I will
16 order that, in the event the motion to dismiss or compel
17 arbitration is denied and this matter proceeds, that the
18 parties have 14 days from the date of that order to file a new
19 Discovery Plan and Scheduling Order. And I would hope that
20 the parties could agree on that, at least on that aspect of
21 it, so that in the event that's denied by Judge Navarro, the
22 discovery will proceed as quickly thereafter as possible.

23 That disposes of 33 and 40.

24 Mr. Loigman, anything else from the defendants on
25 this matter since it was your motion?

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